

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

WALTER BENN, Jr.,	:	CASE NO. 1:07CV854
	:	
Plaintiff,	:	Senior Judge Weber
	:	Magistrate Judge Hogan
vs.	:	
	:	
JAMES NICHOLSON, SEC'Y	:	SECRETARY JAMES PEAKE'S
DEPT. OF VETERANS AFFAIRS,¹ et al.,	:	ANSWER
	:	
Defendants.	:	

Comes now the Defendant, James Peake, Secretary of the Department of Veterans Affairs, and hereby submits his Answer to the *pro se* Complaint filed by the Plaintiff Walter Benn Jr. ("Benn"). This Honorable Court has recently issued an Order dismissing several Defendants as well as the disability-based claim of the Plaintiff and this Answer will deal with the remaining cause of action left in this matter.

1. Parties

A. The Defendant admits that Walter Benn is the Plaintiff in this matter.

B. Dr. James B. Peake is the current Secretary of the Department of Veterans Affairs and is the proper Defendant. The additional Defendants have been dismissed from this case.

¹James Nicholson is no longer the Secretary of the Dept. of Veterans' Affairs. Dr. James B. Peake was sworn into office as the Secretary on December 20, 2007 and should be substituted as the proper defendant in this case.

II. Jurisdiction

A. The Defendant admits that the right to sue letter was issued by the EEOC on or about August 23, 2007.

B. The Defendant is without knowledge sufficient to answer when the Plaintiff received the right to sue letter and therefore denies the same.

III. Statement of Claim

The Defendant denies he discriminated against the Plaintiff in any way. Plaintiff's allegations, if any, suggesting that the Defendant discriminated against the Plaintiff are denied.

IV. Relief

The Defendant denies that the Plaintiff is entitled to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

The Plaintiff fails to state a claim upon which relief may be granted

SECOND AFFIRMATIVE DEFENSE

The Plaintiff has failed to exhaust his administrative remedies.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's claim is barred by laches.

FOURTH AFFIRMATIVE DEFENSE

This Court is without proper jurisdiction to adjudicate the Plaintiff's claims.

Respectfully submitted,

WILLIAM E. HUNT
Acting United States Attorney

s/James M. Coombe
JAMES M. COOMBE (0025538)
Assistant United States Attorney
Attorney for Defendant
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
(513) 684-3711; Fax: (513) 684-6972
James.Coombe @usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Secretary James Peake's Answer was served
this 21st day of September, by regular U.S. Mail on:

Walter Benn
3443 Alta Vista Avenue
Cincinnati, Ohio 45211

s/James M. Coombe
JAMES M. COOMBE (0025538)
Assistant United States Attorney